

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 05-CV-00329-TCK-SAJ
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

**STATE OF OKLAHOMA’S MOTION TO SETTLE THE  
TERMS OF THE CONFIDENTIALITY ORDER AND  
INTEGRATED MEMORANDUM IN SUPPORT THEREOF**

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (“the State”), and moves this Court to settle the terms of the confidentiality order consistent with Exhibit A and enter same.<sup>1</sup> In support of its motion, the State states as follows:<sup>2</sup>

**I. INTRODUCTION**

Following the August 10, 2006 hearing on the State's motion for entry of a confidentiality order, this Court directed the parties to revise the proposed confidentiality order consistent with its August 15, 2006 Order [DKT #888]. On August 22, 2006, the State sent a revised version of the confidentiality order to the Poultry Integrator Defendants for their review and comment.

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<sup>1</sup> Consistent with the Court's August 15, 2006 Order [DKT #888], Exhibit A (the proposed confidentiality order) is also being provided to the Court in Word format.

<sup>2</sup> The parties conferred in good faith on this matter, and have been unable to reach an accord on the dispute that is the subject of this motion.

After several weeks, on September 15, 2006, the Poultry Integrator Defendants sent the State a red-line containing their suggested changes.

Following a review of the suggested changes and two good-faith meet-and-confer sessions,<sup>3</sup> there is only one provision in the confidentiality order upon which the two sides have not reached an accord. The provision at issue is found in section 5(c)(2), and pertains to whether counsel for the State may, after certifying that "the assistance of [an employee of the party plaintiff -- i.e., the State] is reasonably necessary to the conduct of this litigation and that this assistance requires the disclosure to this individual of information which has been designated as CONFIDENTIAL ATTORNEYS' EYES ONLY," disclose such CONFIDENTIAL ATTORNEYS' EYES ONLY information to such a State employee consistent with the terms of the confidentiality order. The State maintains that inclusion of this provision is appropriate inasmuch as such disclosures to State employees would in no way implicate the trade secret concerns advanced by the Poultry Integrator Defendants. The Poultry Integrator Defendants, on the other hand, maintain that this provision should not be included, thereby potentially hamstringing the State in its case preparation.

## II. ARGUMENT

The justification advanced by the Poultry Integrator Defendants in support of the CONFIDENTIAL ATTORNEYS' EYES ONLY designation was that "[a] two-tiered confidentiality order would allow a party to designate highly confidential documents or other items, which if disclosed to a competitor might cause material injury to the disclosing party . . . ." Defendants' Joint Response in Opposition to Plaintiff's Motion for Entry of Proposed

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<sup>3</sup> Counsel for the two sides met and conferred on September 15, 2006, and on September 19, 2006.

Confidentiality Order, p. 2 [DKT #641] (emphasis added). Section 5(c)(2) of the confidentiality order provides:

c. Limited Third Party Disclosures of Documents Designated as CONFIDENTIAL ATTORNEYS' EYES ONLY. The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated as CONFIDENTIAL ATTORNEYS' EYES ONLY under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at Attachment A hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL ATTORNEYS' EYES ONLY pursuant to this Order:

\* \* \*

(2) party plaintiff and employees of a party plaintiff to this Order but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed.<sup>fn</sup>

<sup>fn</sup> At or prior to the time such party or employee completes his or her acknowledgment of review of this Order and agreement to be bound by it (Attachment A hereto), counsel shall complete a certification in the form shown at Attachment B hereto. Counsel shall retain the certification together with the form signed by the party or employee.

Exhibit A (emphasis added). Plainly, since this provision permits disclosure of CONFIDENTIAL ATTORNEYS' EYES ONLY documents only to State employees, and then only upon a certification by counsel of need and subject to the terms of the confidentiality order, the Poultry Integrator Defendants' concern that such documents might be shared among competitors is not implicated. Further, it must be noted that the State's employees are a tremendous repository of knowledge and experience on many of the issues raised in this litigation. To deprive the State's counsel of the ability to share and discuss such documents --

subject, of course, to a certification of need and to the terms of the confidentiality -- with State employees would seriously, and needlessly, prejudice the State in its trial preparations.

### III. CONCLUSION

WHEREFORE, premises considered, this Court should settle the terms of the confidentiality order such that it includes section 5(c)(2), and enter same.

Respectfully Submitted,

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